Section 54 deals with evidence of character in these terms:

"In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.'

The annotation to that section at page 374 of *Monir* (4th Edition) shows that there are Indian authorities (not available in Jesselton) which establish that this section does not make inadmissible evidence which is otherwise admissible. Part of that annotation reads:

"It should, however, be remembered that evidence which is otherwise relevant cannot become irrelevant merely because, besides being relevant on the point on which it is tendered, it incidentally shows the accused to be of a bad character. If the evidence of motive incidentally discloses the bad character of the accused, the evidence does not, for that reason, become irrelevant."

This evidence was therefore admissible.

So far as the alternative submission is concerned, enough has been said to show the importance of this evidence. Strong and convincing evidence of motive will probably have a high evidential value in all circumstances, but that must be especially so in a case like this, where there is only circumstantial evidence of the murder itself. There is no doubt, therefore, that the trial Judge was correct in not exercising his discretion in favour of excluding this evidence on the ground that its prejudicial effect would be out of proportion to its evidential view.

The appeal must therefore be dismissed and the conviction and sentence confirmed.

Appeal dismissed.

Solicitors: *Rayner & Co.*

TINIT & ORS. v. PUBLIC PROSECUTOR

[A.Cr.J. (McGilligan J.) February 8, 1964]

[Sibu — High Court Criminal Appeal No. 17 of 1963]

Prisons Ordinance (Sarawak Cap. 24), s. 68—Prison Rules, r. 161—Ultra vires.

Criminal Procedure—Sentence of imprisonment—Appeal—Time spent in prison pending appeal—Whether treated as part of term of imprisonment—Criminal Procedure Code (Sarawak Cap. 58), s. 261.

The appellants were charged and convicted by the Magistrate under section 380 of the Penal Code. On appeal the sentences of all the appellants were affirmed except that of one B whose sentence was reduced from 15 months imprisonment to 6 months imprisonment. Rule 161 of the Prison Rules states: "The time during which a prisoner is treated as an appellant shall not count towards his sentence of imprisonment." On a question as to when the sentences of imprisonment were to run,

Held: (1) rule 161 of the Prison Rules was *ultra vires* the power given by section 68 of the Prisons Ordinance for the making of rules;

(2) even if this rule was *intra vires* it must give way to section 261 of the Criminal Procedure Code which provides that an appeal shall not operate as a stay of execution unless as ordered by the Court. Since there was no such order of stay, time spent by the appellants in prison pending appeal counted towards the sentences of imprisonment imposed upon them.

CRIMINAL APPEAL.

In this case there were 10 appellants. In the Court below, they and one other were charged on October 8, 1963 on the following charges:

"That you, between the 15th day of September, 1963 and the 17th day of September, 1963, at Oya Road, Sibu, committed from a building used for the custody of property, the theft of merchandise to the approximate value of dollars three thousand four hundred and forty and cents eighty five, by dishonestly taking the said property out of the possession of HO CHIN SOON(m) and you thereby committed an offence punishable under section 380 of the Penal Code.

Alternatively

That you, between the 15th day of September, 1963 and the 18th day of September, 1963, dishonestly retained stolen property, to wit, merchandise to the approximate value of dollars three thousand four hundred and forty and cents eighty five, belonging to HO CHIN SOON(m), which said property you knew or had reason to believe to be stolen property, and you thereby committed an offence punishable under section 411 of the Penal Code."

All 11 accused claimed trial on both charges. The trial before the learned Magistrate began on November 4, 1963 and judgment was delivered on November 9. One of the accused was acquitted. The 10 appellants appealed on various grounds. After considering at length the learned Judge dismissed their appeals against sentence except that of one B who was only 17 years old. In the case of this appellant the learned Judge reduced his sentence from 15 months to 6 months.

C. T. Wong for 4 of the appellants.

6 appellants appeared in person.

J. W. Williams (Deputy Public Prosecutor) for the respondent.

The report below is only concerned with that part of the judgment dealing with the Prison Rules.

McGilligan J.: There is one final question: from what date are the sentences of imprisonment imposed by the trial Magistrate to run, from to-day or from the date of his judgment, that is the 9th of November 1963. Rule 161 of the Prison Rules says:—

"The time during which a prisoner is treated as an appellant shall not count towards his sentence of imprisonment".

I, however, have long felt that the making of that rule was *ultra vires* the rule-making power given by section 68 of the Prisons Ordinance, and it can, at best, be only a declaration or reminder, as it were, of the law elsewhere enacted. There also exists, in any event, section 261 of the Criminal Procedure Code, which enacts that no appeal shall operate as a stay of execution of sentence unless the Court passing sentence, or the appeal Court, makes an order that execution shall be stayed pending appeal. This section must clearly be given precedence over rule 161 of the Prison Rules (even if that rule was made *intra vires*),

and, in my judgment, the time spent by an offender (that is a convicted accused) in prison must, unless an order staying execution has been made, be treated as, and be, part of his term of imprisonment. In this case therefore, the appellants' sentences will run in each case from the 9th day of November, 1963.

Appeals dismissed.

Solicitors: *Yong & Wong.*

SEETHAPATHY v. SINGAPORE HARBOUR BOARD STAFF ASSOCIATION & ORS.

[O.C.J. (Chua J.) February 10, 1964]
[Singapore — Suit No. 1552 of 1962]

Trade union—Rules and Constitution—Non-compliance with—Effect of—Whether acts ultra vires—Cancellation of registration—Whether declarations and injunction would lie against members of executive council—Trade Unions Ordinance (Cap. 154), s. 18(c) & (d).

The constitution of the defendant association, a registered trade union, required the holding of an annual general meeting as soon as may be convenient after the close of the financial year on March 31 each year. The other relevant rules are as follows:

"8 (b) The business of the Annual General Meeting shall be to consider and decide the internal questions of policy affecting the general industrial and social welfare of the members; to receive reports from the General Secretary, Treasurer and the Executive Council, and receive the Ballot Scrutineers' report on the ballot taken for the election of office-bearers of the Executive Council, Internal Auditors and Trustees.

(c) The General Secretary shall then prepare and forward to all members not less than 1 week before the date fixed for the meeting a notice and agenda of the meeting.

10 (b) ....The General Secretary who shall be the full time official of the Association shall be appointed by the remaining elected members of the Executive Council under conditions that may be decided upon by them. His duties shall be controlled and supervised by the Executive Council.

(g) The Executive Council shall give instructions to the Secretary, other officers and paid staff for the conduct of the Association. It may appoint such staff as it may consider necessary. It may suspend or dismiss any officer or member of the staff for neglect of duty, dishonesty, incompetence, refusal to carry out the decisions of the Executive Council or for any other reason which it deems good and sufficient in the interests of the Union.

15 (a) Voting shall be by secret ballot of the whole membership of the Association in respect of the election of office-bearers.

(d) The Executive Council shall take such steps to see that the following procedures governing secret ballot are complied with:

(i) That each member entitled to vote is issued with a ballot paper together with an envelope addressed to the General Secretary for the return of the ballot."

No annual general meetings were held in 1959, 1960 and 1961. In 1962 the then executive council fixed November 14, 1962 as the day for the annual general meeting and for the election of office bearers and on the said day the 2nd defendants (declared to be elected unopposed) and the 3rd defendants (declared to be elected by vote) were declared elected to the executive council.

The plaintiff, a member of the association commenced proceedings for declarations that the purported annual general meeting held on November 14, 1962 was invalid, that the purported election of the 2nd and 3rd defendants was null and void and that the 4th defendant, the general secretary, had no power to act in that capacity. The plaintiff also sought an injunction against the 2nd, 3rd and 4th defendants to restrain them from acting in their respective capacities. Counsel for the defendants submitted that the failure to hold annual general meetings and election of members to the executive council was not *ultra vires;* that the appointment of general secretary was a permanent appointment as provided in rule 10(g) and he could only be dismissed under that rule; that Court should not grant the declarations and injunction sought by the plaintiff on the ground that the matter was of purely academic interest after July 22, 1963 as the certificate of registration of the association had been cancelled and an injunction if granted could not be enforced. It was also submitted to the Court that the annual general meeting held on November 14, 1962 was invalid because no notice of the meeting had been forwarded to all members and the meeting did not receive the reports as required under rule 8(b) and further that rule 15 had not been complied with because ballot papers together with the envelopes addressed to the general secretary were not sent to every member.

Held: (1) the association in not holding annual general meetings and election of members to the executive council in 1959 to 1961 was acting in direct contravention of rules 8 and 10(b) and such conduct was not a mere irregularity but a matter of substance;

(2) it was absolutely illegal for the executive council to carry on and manage the affairs of the association from 1959 to 1962 and therefore the annual general meeting held on November 14, 1962 was invalid and the election held on the same day null and void;

(3) the meaning and effect of rule 10(b) was that the general secretary was to be appointed annually by the elected members of the executive council who themselves were to be elected annually;

(4) this matter was not of purely academic interest and in view of section 18(c) and (d) of the Trade Unions Ordinance the plaintiff should be granted the declarations and injunction;

(5) there had been a flagrant breach of rule 8(b) and (c) which breach was *ultra vires* the rules;

(6) the defendants contravened rule 15(d)(i) and the failure to observe this rule was *ultra vires* the executive council.

Cases cited in argument:—

In Re Durham Miners Assn., Watson v. *Cann* (1900), 17 T.L.R. 39; *Royal Mutual Benefit Building Socy.* v. *Sharman* [1963] 1 W.L.R. 584; *Brodie* v. *Bevan,* (1921-22), 38 T.L.R. 172; *Ashbury Railway Carriage & Iron Co.* (1874-75) L.R. 7 H.L. 653; *Towers* v. *African Trading Co.* [1904] 1 Ch. 567; *Cotter* v. *National Union of Seamen* [1929] 2 Ch. 58, C.A. *Edwards* v. *Gulliver & Co.* [1950] 2 All E.R. 106; *Amalgamated Socy. of Engineers* v. *Jones* (1912-13) 29 T.L.R. 484; *Foss* v. *Harbottle* (1843), 2 Hare 461; *Howard* v. *Prickfood Tool Co. Ltd.* [1951] 1 K.B. 417; *Maerkle* v. *British & Continental Fur Co. Ltd.* [1954] 3 All E.R. 54.

SUIT.

M. Coomaraswamy for the plaintiff.

T. T. Rajah for the defendants.

Cur. Adv. Vult.

Chua J.: The plaintiff in this case is a member of the Singapore Harbour Board Staff